IN THE

Supreme Court of the United States

OCTOBER TERM, 19

No.

ARLENE E. DALY

Petitioner

VS.

GEORGE D. DALY, JR.

Respondent

Petition for a Writ of Certiorari to the Supreme Court of Appeals of the Commonwealth of Virginia

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INDEX

	Page
DECISIONS BELOW	1
JURISDICTION	1-2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS AND STATUTES	2
STATEMENT OF CASE	3-4
REASONS FOR GRANTING THE WRIT	4-5
CONCLUSION	5

APPENDIX

Decision of Supreme Court of Appeals of Virginia	1a
Code of Virginia, 1950, as amended, Section 20-95	2a
Code of Virginia, 1950, as amended, Section 20-91	2a-3a

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DECISIONS BELOW

There was no report of the trial court's decision.

The decision of the Supreme Court of Appeals of Virginia on March 10, 1970, refused petitioner's appeal. A copy of said decision is annexed in the Appendix.

JURISDICTION

The judgment of the Supreme Court of Appeals of

Virginia was entered on March 10, 1970. There were no petitions for rehearing. On June 9, 1970, Chief Justice Berger granted an extension to and including August 7, 1970, within which to file Petition for Writ of Certiorari. The jurisdiction of this Court is invoked pursuant to U. S. C. Title 28, Sec. 1257 (3).

QUESTIONS PRESENTED

Whether, under the facts present, petitioner's Constitutional rights were violated when her husband was permitted to obtain a divorce from her under the Virginia statute allowing a divorce on the grounds of having lived separate and apart without any cohabitation and without interruption for two years.

CONSTITUTIONAL PROVISIONS AND STATUTES

Constitution of the United States, Amendment XIV, Section 1, provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Code of Virginia 1950, as amended, Sections 20-95 and 20-91 are set forth in the Appendix.

STATEMENT OF THE CASE

Petitioner and Respondent are husband and wife. On July 21, 1966, Petitioner was forced by her husband from the home where they resided in Norfolk, Virginia. Respondent thereupon filed a divorce action asking for a divorce from bed and board on grounds that Petitioner had deserted him. Petitioner filed responsive pleadings denying that she had deserted.

No hearing was had on the desertion claim. After two years had passed, Respondent amended his grounds for divorce asking that he be granted a final divorce on the grounds that the parties had lived separate and apart for two years. The lower court awarded the Respondent a final divorce on the grounds of separation for two years.

The Supreme Court of Appeals of Virginia rejected Petitioner's appeal, the effect of which was to affirm the decree of the lower court.

The Federal question was raised in the court of first instance in oral argument and was raised on appeal to the Supreme Court of Appeals of Virginia in the Petition for a Writ of Error and in oral argument in behalf of said petition.

In her Petition for a Writ of Error, Petitioner, in her errors assigned and questions involved in the appeal, asserted, among other errors the following:

1. The Court erred in entering a final decree of divorce on the grounds of continuous separation of the

parties for over two years, under the pleadings, evidence and law applicable to this cause.

4. The Court erred in entering a final decree of divorce on the grounds of continuous separation of the parties for over two years due to the law being unclear and ambiguous, which denied Defendant due process of law.

REASONS FOR GRANTING THE WRIT

In this case the Supreme Court of Appeals of Virginia has refused Petitioner's appeal and, accordingly, has decided adversely to her a federal question not theretofore determined by this Court. Accordingly, the Constitutional rights of Petitioner and her family, and others similarly situated, have been violated.

Respondent created a situation that made it necessary for Petitioner and her two children to leave home for their own safety and to remain away under advice of a physician. Respondent immediately filed for a divorce asserting desertion by Petitioner. Petitioner denied the desertion, returned to live in the home at which time Respondent left and did not return.

Two years later Respondent changed his grounds for divorce from desertion to two years separation and was awarded a divorce on said grounds. Thus Respondent, a wrongdoer, under the Virginia statutes applicable, prevails over one who had done no wrong, with a result that, if allowed to stand, deprives Petitioner of basic Constitutional rights.

Petitioner's desire to preserve the family unit has

been used against her and she has been deprived of rights as an innocent party, falsely accused, to disprove the alleged desertion. The statutes in point do not distinguish between desertion and separation as applied to the facts here present.

The two year separation statute is unclear and ambiguous viewed in the light of the desertion statutes and its application in the instant case clearly violates Petitioner's Constitutional rights.

To apply the two year separation statute to the instant case is a clearly unfair and inequitable application of such statute against Petitioner in denial to her of due process of law.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

ARLENE E. DALY

By: JAY M. BALL
Counsel for Petitioner

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 10th day of March, 1970.

The petition of Arlene E. Daly for an appeal from a decree entered by the Circuit Court of the City of Norfolk on the 18th day of September, 1969, in a certain chancery cause then therein depending, wherein George D. Daly, Jr., was plaintiff and the petitioner was defendant, having been maturely considered and a transcript of the record of the decree aforesaid seen and inspected, the court being of opinion that there is no reversible error in the decree appealed from, doth reject said petition, and refuse said appeal, the effect of which is to affirm the decree of the said circuit court.

A Copy,

Teste:

Howard G. Turner, Clerk

By:

/s/ R. P. Tomlinson

Deputy Clerk

Code of Virginia, 1950, as amended, Section 20-95. Grounds for divorces from bed and board.—A divorce from bed and board may be decreed from cruelty, reasonable apprehension of bodily hurt, abandonment or desertion.

Code of Virginia, 1950, as amended, Section 20-91. Grounds for divorce from bond of matrimony.—A divorce from the bond of matrimony may be decreed:

(1) For adultery, or sodomy or buggery;

(2) For natural or incurable impotency of body existing at the time of entering into the matrimonial contract;

(3) Where either of the parties subsequent to the marriage has been sentenced to confinement in the penitentiary of this State or of any other state of the United States or to confinement in a penitentiary of the United States, and cohabitation has not been resumed after such confinement (in which case no pardon granted to the party so sentenced shall restore such party to his or her conjugal rights);

(4) Where prior to the marriage, either party, without the knowledge of the other, had been convicted of an infamous offense;

(5) [Repealed.]

(6) Where either party wilfully deserts or abandons the other for one year such divorce may be decreed to the party abandoned;

(7) Where, at the time of the marriage, the wife without the knowledge of the husband was with child by some person other than the husband;

(8) Where prior to the marriage the wife had been, without the knowledge of her husband, a prostitute, such divorce may be decreed to the husband; and

(9) On the application of either party if and when the husband and wife have lived separate and apart without any cohabitation and without interruption for two years. A plea of res adjudicata or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground.